HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.682 of 2007

Between:

S. Lavanya Rani … Appellant

And

Andhra Pradesh State Financial Corporation,
represented by its General Manager,
Hyderabad and two others. … Respondents

:: J U D G M E N T ::

Counsel for the appellant : Sri Donthireddy Venkat Reddy

11th September, 2007

Per G.S. Singhvi, C.J.

This appeal is directed against order dated 06.12.2006, whereby the learned Single Judge dismissed Writ Petition No.24149 of 2006 filed by the appellant questioning the action taken by Andhra Pradesh State Financial Corporation (for short, 'the Corporation') under Section 29 of the State Financial Corporations Act, 1951 (for short, 'the Act') for recovery of its dues.

It is borne out from the record that one Dr. T. Venugopala Rao (hereinafter referred to as 'the borrower') took loan of Rs.24,34,000/- from the Corporation. He offered three collateral securities including the land measuring 370 sq. yds. comprised in Survey No.3/D & 4/D, Kakatiya Colony, Hanmakonda, Warangal belonging to the appellant.

On account of default in repayment of loan by the borrower, the Corporation issued notice dated 18-3-2004 to him, the appellant and

other sureties requiring them to repay the loan with an indication that if they fail to do so, the properties offered as collateral securities will be put to sale under Section 29 of the Act. The notice issued to the appellant was acknowledged by her brother, Sri S.L. Sarath Kumar, but she did not pay the dues of the Corporation. The borrower and other surety-holders appear to have adopted similar tactics.

Having failed to elicit response from the borrower and sureties, the Corporation issued advertisement dated 23-3-2004 for sale of the collateral securities. The same was challenged by the borrower, appellant and other surety-holders in Writ Petition No.6225 of 2004, but did not pursue the same resulting in its dismissal in non-prosecution. After sometime, the appellant sent letter dated 5-7-2005 to the General Manager of the Corporation conveying her willingness to pay the amount. However, this turned out to be a ploy to delay the inevitable i.e. the sale of the secured assets because she did not deposit even a single penny with the Corporation. On its part, the Corporation issued notices dated 10-10-2005, 3-2-2006 and 28-8-2006 to the borrower and sureties informing them about the proposed sale of the collateral securities, but neither of them bothered to pay the outstanding dues.

On 2-4-2005, 7-10-2005, 3-2-2006 and 16-8-2006, the Corporation advertised the collateral securities for sale. The offers received pursuant to first three advertisements were not accepted being on lower side, but the one given by Triloknath (respondent No.3 herein) for purchase of the appellant's property for Rs.15.50 lakhs was accepted.

The appellant challenged the sale of her land in Writ Petition No.24149 of 2006 by asserting that she had not received the notice issued by the Corporation and she was not given opportunity to give appropriate bid or bring a buyer. The learned Single Judge took cognizance of the averments contained in the counter affidavit that notice dated 18-3-2004 had been received by the brother of the

appellant and that she had written letter dated 5-7-2005 to the General Manager conveying her willingness to pay the amount and observed that the plea of non-receipt of notices issued by the Corporation was false. Accordingly, he dismissed the writ petition by recording the following observations:

> "In the writ petition the petitioner specifically pleads in paragraph No.3 "However, at no point of time I was issued with any notice by the respondents for payment of loan amount as a guarantor for Dr.T.Venugopal Rao". The same allegations and assertions that no notice whatsoever were issued to her regarding the liability to pay the amount or sale of the property is reiterated in paragraph No.4.
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> In the counter-affidavit the respondent-Corporation specifically asserts that several notices were issued to her and the petitioner also by a letter dated.05-07-2005 represented to the General Manager of the respondent-Corporation that she intends to pay the amount. Curiously in a reply affidavit filed on 30-11-2006 the petitioner is silent on the averments in the counter-affidavit that a notice dated.08-03-2004 was issued to her as well as the other assertions in the counter that she herself through a letter dated.05-07-2005 agreed to repay the amounts. The reply affidavit proceeds to plead that the petitioner is willing to pay if the respondents fix a reasonable amount."

We have heard Sri D. Venkat Reddy, learned counsel for the appellant, who reiterated the arguments advanced before the learned Single Judge and submitted that the auction held by the Corporation pursuant to advertisement dated 16-8-2006 is liable to be annulled because the appellant was not given notice of the proceedings initiated under Section 29 of the Act and the Corporation disposed of her property without giving her opportunity to give a better offer or bring a buyer.

In our opinion, the appeal is liable to be dismissed summarily because the appellant has not approached the Court with clean hands and also because she has failed to substantiate the allegation of denial of opportunity to give a better offer pursuant to advertisement dated 16-8-2006. In paragraphs 5 and 6 of the

counter-affidavit filed in the writ petition, Sri D. Suresam, Senior Branch Manager of Warangal Branch of the Corporation, made the following averments:

"5. It is submitted that after availing the loan as stated above said doctor has not implemented the project and left Warangal. As there is no alternative the Corporation had issued a notice to the collateral security holder i.e., the petitioner herein and others on 18-3-2004 requesting them to remit the loan amounts failing which the property offered as a collateral security shall be put to sale. The said notices were acknowledged by them. The petitioner herein through her letter dt.6-7-2005 represented to the General Manager of the Corporation that she wants to close amount by making payments. However, she has not made any payments whatsoever. Therefore, notices dt.10-10-2005, 3-2-2006 and 28-8-2006 were issued to the petitioner informing her about the proposed sale. In spite of that, the petitioner has not chosen to respond by making payments. The Corporation, as there is no alternative, issued advertisement for the sale of collateral properties u/S. 29 of the SFC Act on 23-3-2004, 2-4-2005, 7-10-2005, 3-2-2006 and 16-8-2006 as follows:

S.No.	Date of Advertisement	Name of the daily and its coverage	Name of the bidder and bid amount	Down Payment	Remarks/ Reasons
1.	23-3-2004	Eenadu,Warangal	No offers		
2.	2-4-2005	Eenadu,Warangal	1 . Ms.I. Surekha – Rs.11.60 lacs – 100% in 60 days. 2. Sri N. Venugopal – Rs.9.64 lacs (6.7.2005) – 100% in 30 days. 3. Sri Ch. Raghunath – Rs.9.60 lacs (6.7.2005) – 100% in 60 days.	100%	Rejected Rejected Rejected
3.	7-10-2005	Eenadu,Warangal	Dr. A. Upender – Rs.12.50 lacs – 100% in 60 days.	100%	Rejected
4.	3-2-2005	Eenadu,Warangal	Ch.Raghunath – Rs.10.50 lacs – 100% in 60 days.	100%	Rejected
5.	16-8-2006	Eenadu,Warangal	I . Triloknath – Rs.15.50 lacs – 100% in 60 days.	100%	Accepted

Except the sale notification dt.16-8-2006, others were rejected on the ground of low offer made by the bidders. With reference to advertisement on 16-8-2006, Mr. Triloknath offered Rs.15.50 lakhs in respect of the petitioner's property and the same is accepted by the Corporation on 12-10-2006 and a sale letter was issued to the purchaser accepting the offer. As per the approval, purchaser was granted time up to 11-12-2006 for the payment of balance sale consideration.

6. With regard to the other averments made in the affidavit filed in support of W.P. it is submitted that it is incorrect to state that the petitioner was not issued any notice prior to putting the property on sale. Petitioner was issued several notices including the notice on 18-3-2004 which was acknowledged by Sri S.L. Sarath Kumar, brother of petitioner herein. It is also relevant here to mention that the petitioner and other surety holders including the principal borrower have jointly filed W.P.No.6225/2004 questioning the earlier sale notification. The said W.P. was dismissed for default for non-prosecution. Therefore, the allegation of the petitioner that she was surprised to know about the sale of her property through paper notification is totally incorrect and made for the purpose of this W.P. It is humbly submitted that even though sale notification is valid for 90 days from the date of its publication, however the Corporation can accept the sale of the property if the offer is satisfactory even before 90 days as per Clause 3 of terms and conditions of notification and the same would be displayed on notice board for 7 days inviting the further bids over and above the offer displayed on the notice board from the prospective bidders. The Corporation can entertain further offers from the prospective bidders, who shall deposit along with the EMD, 15% of the amount offered in the earlier bid within 7 days. The Corporation also entertain further bids even after 7 days but before the confirmation of sale if any better offers are made by the bidders. It is totally incorrect to allege that the petitioner has paid EMD for Rs.50,000/- by way of D.D.No.587738 dt.13-11-2006 and requested the 1st respondent herein to issue tender application. As such, it is also totally incorrect to state that the 1st respondent herein bluntly refused to supply the tender application to the petitioner. The Corporation followed all principles of natural justice before issuing sale notification with respect to the property of the petitioner.

I submit that the Corporation is at liberty to proceed against the principal debtor or collateral securities for realisation of its dues. It is relevant here to mention that prior to the sale of collateral security of the petitioner the other collateral security property of Sri Didigam Ravinder at Station Ghanpur, Warangal was sold for a total consideration of Rs.7.51 lakhs and handed over the possession of the said property to the purchaser, Sri Raghuveer on

6-11-2006. It is submitted that even after adjusting the sale consideration of Rs.7.51 lakhs in the loan account of Dr. T. Venugaopal still the following outstanding amounts are due as on 31-10-2006 which are to be recovered:

Principal : Rs.16,61,173/-
Interest : Rs.15,71,391/-
Total due : Rs.32,32,564/- ‘’

The appellant filed reply affidavit, but did not controvert the fact that Sri S.L. Sarath Kumar is her brother and that he had received notice dated 18-3-2004. She also did not deny the fact that she along with other surety-holders and borrower filed Writ Petition No.6225 of 2004, which was dismissed for want of prosecution. It is, thus, evident that the affidavit filed by the appellant in Writ Petition No.24149 of 2006 with the assertion that she did not receive the notice issued by the Corporation and that she did not have knowledge about the proposed sale of the collateral security offered by her was false and misleading. To put it differently, the appellant has not approached the Court with clean hands and tried to mislead the Court in believing that the Corporation and its functionaries have sold her property without giving her notice and opportunity to give a better offer or bring a buyer who could purchase the property for higher amount. This conduct of the appellant is, in our opinion, sufficient to non-suit her by applying the ratio of the judgments of the Supreme Court in **Hari Narain v. Badri Das**[1], **Welcome Hotel and others v. State of Andhra Pradesh and others etc.**[2] **G. Narayanaswamy Reddy and others v. Government of Karnataka and another**[3], **S.P.Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others**[4].

The appellant’s challenge to the auction of her property, which appears to be founded on the ratio of the Supreme Court’s judgment in **Mahesh Chandra v. Regional Manger, U.P. Financial Corporation**[5] is liable to be negatived in view of the law laid down in other cases including the following:

U.P. Financial Corporation v. Naini Oxygen & Acetylene Gas Ltd. – (1995) 2 SCC 754;

Karnataka State Financial Corporation v. Micro Cast Rubber & Allied Products (P) Ltd. - (1996) 5 SCC 65;

Haryana Financial Corporation v. Jagdamba Oil Mills – (2002) 3 SCC 496, and

Karnataka State Industrial Investment & Development Corporation Ltd. v. Cavalet India Ltd. – (2005) 4 SCC 456.

In **Naini Oxygen & Acetylene Gas Ltd.**'s case (supra), the Supreme Court reversed the judgment of the Allahabad High Court, which had overturned the action taken by the appellant to recover its dues by resorting to Section 3 of the U.P. Public Moneys (Recovery of Dues) Act and held:

"The Corporation is an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge. As such, in the discharge of its functions, it is free to act according to its own light. The views it forms and the decisions it takes are on the basis of the information in its possession and the advice it receives and according to its own perspective and calculations. Unless its action is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however more prudent, commercial or businesslike it may be, for the decision of the Corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the Corporation, the same cannot be assailed for making the Corporation liable. In matters commercial, the courts should not risk their judgments for the judgments of the bodies to whom that task is assigned."

In the case of **Jagdamba Oil Mills** (supra), a three Judges Bench of the Supreme Court partly overruled the judgment in **Mahesh Chandra**'s case (supra) and laid down the following propositions:

"The view in Mahesh Chandra case appears to have been too widely expressed without taking note of the ground realities and the intended objects of the statute. If the guidelines as indicated are to be strictly followed, it would be giving premium to a dishonest borrower. It would not further the interest of any Corporation and consequently of the industrial undertakings intending to avail financial assistance. It would only provide an unwarranted opportunity to the defaulter (in most cases chronic and deliberate) to stall recovery proceedings. It is not to be understood that in every case the Corporations shall take recourse to action under Section 29. Procedure to be followed,

needless to say, has to be observed. If any reason is indicated or cause shown for the default, the same has to be considered in its proper perspective and a conscious decision has to be taken as to whether action under Section 29 of the Act is called for. Thereafter, the modalities for disposal of seized unit have to be worked out. The view expressed in U.P. Financial Corporation v. Gem Cap (India) (P) Ltd. [(1993) 2 SCC 299] appears to be more in line with the legislative intent.

The aforesaid guidelines issued in Mahesh Chandra case place unnecessary restrictions on the exercise of power by Financial Corporation contained in Section 29 of the Act by requiring the defaulting unit-holder to be associated or consulted at every stage in the sale of the property. A person who has defaulted is hardly ever likely to cooperate in the sale of his assets. The procedure indicated in Mahesh Chandra case will only lead to further delay in realization of the dues by the Corporation by sale of assets. It is always expected that the Corporation will try and realize the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after due publicity, wherever possible."

In **Karnataka State Industrial Investment & Development Corporation Ltd. v. Cavalet India Ltd.** (supra), the Supreme Court reviewed the judicial precedents on the subject and culled out the following principles:

> " (i) The High Court while exercising its jurisdiction under Article 226 of the Constitution does not sit as an appellate authority over the acts and deeds of the Financial Corporation and seek to correct them. The doctrine of fairness does not convert the writ courts into appellate authorities over administrative authorities.
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> (ii) In a matter between the Corporation and its debtor, a writ court has no say except in two situations:
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> (a) there is a statutory violation on the part of the Corporation, or
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> (b) where the Corporation acts unfairly i.e. unreasonably.
>
> (iii) In commercial matters, the courts should not risk their judgments for the judgments of the bodies to which that task is assigned.
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> (iv) Unless the action of the Financial Corporation is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however, more prudent, commercial or businesslike it may be, for the decision of the Financial Corporation. Hence, whatever the wisdom

(or the lack of it) of the conduct of the Corporation, the same cannot be assailed for making the Corporation liable.

(v) In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold and this could be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer.

(vi) Public auction is not the only mode to secure the best price by inviting maximum public participation, tender and negotiation could also be adopted.

(vii) The Financial Corporation is always expected to try and realise the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after due publicity, wherever possible and if any reason is indicated or cause shown for the default, the same has to be considered in its proper perspective and a conscious decision has to be taken as to whether action under Section 29 of the Act is called for. Thereafter, the modalities for disposal of the seized unit have to be worked out.

(viii) Fairness cannot be a one-way street. The fairness required of the Financial Corporations cannot be carried to the extent of disabling them from recovering what is due to them. While not insisting upon the borrower to honour the commitments undertaken by him, the Financial Corporation alone cannot be shackled hand and foot in the name of fairness.

(ix) Reasonableness is to be tested against the dominant consideration to secure the best price."

In view of the above stated legal position, we hold that the appellant has failed to make out a case for interference with the order of the learned Single Judge and the appeal is liable to be dismissed. Ordered accordingly.

As a sequel to dismissal of the appeal, WAMP.No.1374 of 2007 filed by the appellant for interim relief is also dismissed.

G.S. SINGHVI, C.J.

11th September, 2007

C.V. NAGARJUNA REDDY, J.

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[1] AIR 1963 SC 1558
[2] AIR 1983 SC 1015
[3] AIR 1991 SC 1726
[4] JT 1993 (6) SC 331
[5] (1993) 2 SCC 279